

**Town of Milford  
Zoning Board of Adjustment  
October 20, 2016  
Case #2016-25  
Carolyn Margi Halstead  
Special Exception**

Present: Kevin Johnson, Chair  
Michael Thornton, Vice Chair  
Jason Plourde  
Rob Costantino  
Steven Bonczar

Absent: Joan Dargie  
Katherine Bauer, Bd. of Selectmen Representative

Carolyn Margi Halstead, for property located at 365 Melendy Road, Milford, NH, Tax Map 52, Lot 18-1, in the Residence R, is seeking a Special Exception per the Milford Zoning Ordinances Article VI, Section 6.02.6.B to allow more than 188 SF of wetland buffer for the construction of a driveway.

### **Minutes Approved 11/3/16**

Kevin Johnson, Chair, opened the meeting and introduced the Board members. Tracy Steele, potential alternate member, was seated but not voting.

K. Johnson stated that, because of the time (9:30) they might want to consider tabling the case to the next meeting.

Discussion among Bd. members whether to table the case or start it.

Applicant stated he wouldn't take long.

K. Johnson asked Bd. member if they were okay with starting. They were.

K. Johnson read the notice of hearing. He said the notice said "allow more than 1800 SF of wetland buffer." He had talked with Office of Community Development re fact that it was actually seeking less than 1800 SF. Result was that since more than 1800 SF was more severe and would generate more objection than less than 1800 SF, they felt anyone concerned about the impact of that wetland buffer would certainly respond to more than 1800 SF than less. So they felt the notice was sufficient. If applicant believed that they could continue.

Christopher Guida, Certified Soil Scientist and Certified Wetland Scientist representing Applicant. He gave background for those who were on the Bd. at the time, and those who were not. In 2011 Ms. Halstead sought a subdivision. At that time they proceeded through Zoning Bd. There was wetland crossing indicated by orange line off Rte 13. They had gone to Zoning Bd., Conservation Commission and Wetlands Bd. Received a wetlands permit which is still active. Special exception at that time was one year and changed to two now.

K. Johnson said that was a state change.

C. Guida said Ms. Halstead didn't want to proceed at that time. Recently got Planning Bd. approval for subdivision. With discussion with Office of Community Development, needed to come back to Zoning Bd. No changes to driveway at that time. No change in impact or location. Requesting essentially same 1800 SF of buffer impact. In order to meet town standard drive it must be raised up about 2 ft. Work that would disturb soils and add or remove needs special exception. In order to meet State and town standards. Need to cross buffer to get to wetlands. He would answer any questions.

R. Costantino understood this was wetlands and read everything. Didn't see a problem. Conservation Commission had positive result. Question about going onto Rte. 13. Did somebody else discuss that?

C. Guida said NH DOT – permit pending.

K. Johnson said it was situation like they were discussing in the last case. That you have to get special exception. They have to get wetland permit, drive permit and Planning Bd approval. All the pieces have to happen. If any one of them said it wasn't going to happen – even if they granted the special exception – they are not allowed to proceed. Any other questions from the Bd.? None.

C. Guida asked about reading the application.

K. Johnson said the five general criteria were less important than the 602.7 criteria. If they don't meet those, there would be no reason to go through the other five.

C. Guida went through the seven criteria responses listed in the application:

**1. The proposed use shall be similar to those permitted in the district:**

The proposed use will remain the same as the existing use of the existing woods road, vehicular access to the property from NH Rte. 13. The proposed use includes the upgrade of the existing woods road to a driveway which meets current State and Town driveway safety and construction standards. Driveway construction for access to private property having frontage on Town or State road which meets Town minimum frontage requirements is permitted in the district. Proximate and adjacent properties to the subject property have had similar wetland buffer impacts which were approved by the Town in order to access property from existing frontage. Similar wetlands and associated buffer impacts for driveway access were approved on numerous lots within the district and including the following nearby lots: 52-18-6 NH Rte 12 (Church of Our Savior Episcopal Church) (Wetlands Approval #2005-01762: Minimum Impact less than 3000 square feet). Wetland crossing and buffer impact to cross wetland area which drains to Compressor Brook, with access drive for future development on the property. The Town owned open-space land (Lot 52-1) was also created by the same 7 lot subdivision in 2002. 47-42-1 NH Rte 13 (A&D Self Storage) (Wetland Approval #2002-00060: Minor Permit 3000-10,000 square feet of impact 24' wide road to access self storage units) Wetland crossing and buffer impact in order to access newly created lot from a subdivision approved around 2002 from NH Rte 13, parent lot also had frontage on Colburn Road as well.

**2. The specific site is an appropriate location for the proposed use because:**

The location of the proposed driveway is in the same location of the existing woods road which currently accesses the lot. The location of the proposed driveway avoids the wetlands to the greatest extent possible by following the existing woods road, crossing in another location off NH Rte 13 frontage would require greater wetland buffer impact than that which is proposed. The proposed driveway location has also been situated to minimize wetland buffer impact outside of the immediate wetland crossing area. Alternative driveway locations from Melendy Road have been investigated from the standpoint of safety and environmental impact and determined that due to the steepness of the slopes and the required grading in order to meet the Town of Milford driveway regulations and Stormwater Management and Erosion Control regulations that the driveway location off of NH Rte 13 would be the least impacting alternative. Although upgrading the existing woods road from NH Rte 13 would require a small amount of wetland and buffer impact it would prevent the need to construct a new driveway off Melendy road which would require the removal of 1+/- acre of existing forested area, 8-10 foot solid cut, creating an

addition of 6220+/- square feet of impervious area along a 500 ft driveway in order to access the building location. In summary, an access off Melendy road would result in more land disturbance and tree cutting, more impervious area, steeper grades and more stormwater runoff to the wetlands; ultimately resulting in more environmental impacts. The proposed crossing along the existing woods road would require clearing of 0.2+/- acre and 3000+/- square feet of impervious area for a 200 ft in long driveway along the existing woods road which would not detract significantly from the aesthetic quality of the neighborhood or the wetland and forested landscape. The existing woods road has historically and currently provides access to the property from NH Route 13 and will likely continue to provide access to the property for various activities including property maintenance, firewood processing and forest management activities; the proposed use incorporates an environmentally responsible alternative by upgrading the roadway in order to prevent unnecessary soil erosion.

**3. The use as developed will not adversely affect the adjacent area because:**

The proposed use is the same as the existing use; the only changes being proposed are the required upgrades to meet Town and State safety requirements. The upgrade incorporates erosion control measures and drainage. Improvements which will serve to minimize sediment transport from NH Rte 13 and will stabilize disturbed vegetation stabilization is complete. The use as developed will not adversely affect the adjacent area because all best management practices for construction the upgraded driveway will provide access to the property which has been designed to minimize any erosion during construction and in the future as well provide safe and environmentally responsible access to the property.

**4. There will be no nuisance or serious hazard to vehicles or pedestrians:**

The proposed upgrade will meet Town and State driveway construction regulations to improve safety of the driveway by providing safe sight distance, travel surfaces, side slopes and access for emergency vehicles. The usage as a residential access to a single family dwelling is a permitted use similar to other uses along NH Rte 13 and will not create any nuisance or serious hazard to vehicles or pedestrians.

**5. Adequate appropriate facilities will be provided for the proper operation of the proposed use:**

The proposed driveway upgrade will provide safe slopes, grading and drainage structures to allow for vehicular access to the property. Erosion control measures such as silt fence, erosion control fabric will be applied to stabilize slopes until vegetation becomes established within disturbed areas.

K. Johnson asked for questions from the Bd. There were none. He opened hearing for public comment. None.

K. Johnson closed public comment.

No other questions from the Bd. K. Johnson said this was a special exception with underlying condition. Rather than going over all specific conditions of 6.02.7 ad 10.02, if it met the more restrictive condition of Sec. 6 then those of Sec. 10 were generally satisfied. He asked the Bd. if they felt the conditions for grant had been met.

S. Bonczar – yes

R. Costantino – yes

J. Plourde – yes

M. Thornton –yes  
K. Johnson – yes

K. Johnson said when the original special exception was granted there was a condition added for no salting of the drive. He put that forward for discussion or thought on this application. Do they still feel that was an appropriate condition?

M. Thornton said the administrative support team said same things.

R. Lunn agreed.

K. Johnson said that was carryover from the original and that was why that was on there. Per procedure they consider conditions first. Did Bd. feel they should add a condition about no salting of the driveway allowed?

M. Thornton said yes.

S. Bonczar said no. Think about how much they put on Rte. 13. Amount on drive would be minimal. Would hate to have them restricted. Driveway goes further up. Felt it was undue restriction. Didn't know why it was put on it. Every day more salt on Rte. 13 than ever would be on that drive. Would hate to restrict their being able to put salt further up the drive.

K. Johnson remembered that it was recommendation of the Conservation Commission that carried over. At this point in time considering the current situation, he agreed; he didn't feel that was necessary. He called for a motion to restrict salting on the driveway.

R. Costantino would restrict it so not to second guess the Conservation Commission decision. He moved to put restriction as it was first placed.

J. Plourde seconded.

M. Thornton asked what other areas in this specific area were not salting areas?

K. Johnson was not aware of any.

R. Costantino said this was unique in that it was a drive that went across a wetland.

K. Johnson said not across wetland, but through the buffer.

C. Guida said it did cross a small section.

R. Costantino asked if it was green border depicted?

C. Guida said yes. In order to meet town criteria they had to widen the drive and that impacted.

R. Costantino asked if only on one side of the drive.

C. Guida said in order to meet standard, they were required to be 20 ft. off property.

T. Steele mentioned using sand.

C. Guida agreed.

K. Johnson asked for a motion with second to add a condition, if the special exception was granted, that no salting of the driveway shall be allowed. A yes vote was to add the condition.

Vote on condition: M. Thornton – no; J. Plourde – yes; S. Bonczar – no; R. Costantino – yes; K. Johnson – no

Motion failed; condition would not be added to the special exception, if granted.

K. Johnson asked for motion to approve or deny the requested special exception.

S. Bonczar moved to approve.

R. Costantino seconded.

**Final Vote: A Yes vote was to approve the special exception:**

**M. Thornton – yes**

**J. Plourde – yes**

**S. Bonczar – yes**

**R. Costantino – yes**

**K. Johnson – yes**

**Special exception approved by 5 to 0 vote.**

K. Johnson informed the applicant his request for a special exception had been approved.

There being no further business, meeting adjourned at 10 p.m.